Case	8:17-cv-01397-JVS-JDE Document 108-2 #:3402	Filed 10/22/18 Page 1 of 17 Page ID		
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13	TIMITUTE IN COLUMN	TEC DICTRICT COURT		
14	UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA			
15	CENTRAL DIST	RICT OF CALIFORNIA		
16	MEGAN SCHMITT, DEANA	Case No. 8:17-cv-01397-JVS-JDE		
17	REILLY, CAROL ORLOWSKY, and STEPHANIE MILLER BRUN, individually and on behalf of	PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN		
18	themselves and all others similarly situated,	OPPOSITION TO DEFENDANT YOUNIOUE LLC'S MOTION FOR		
19	Plaintiffs,	SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT		
20	V.			
21	YOUNIQUE, LLC,	Filed Concurrently with the Declaration of Adam Gonnelli,		
22	Defendant.	Declaration of Adam Gonnelli, Plaintiffs' Statement of Disputed Facts, and Plaintiffs'		
23		Response to Defendant's Statement of Disputed Facts		
24		Date: November 19, 2018		
25		Time: 1:30 p.m.		
26		Complaint Filed: 8/17/17		
27		Trial Date: 2/19/19		
- 11				

PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

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14	Lies v. Farrell Lines, Inc.
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9	163 Ohio App. 3d 500, 505 (Ohio Ct. App. 2005)
20	T.W. Electric Service, Inc. v. Pacific Electric Contractors Ass'n
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Genuine issues of material fact preclude summary judgment in this case.

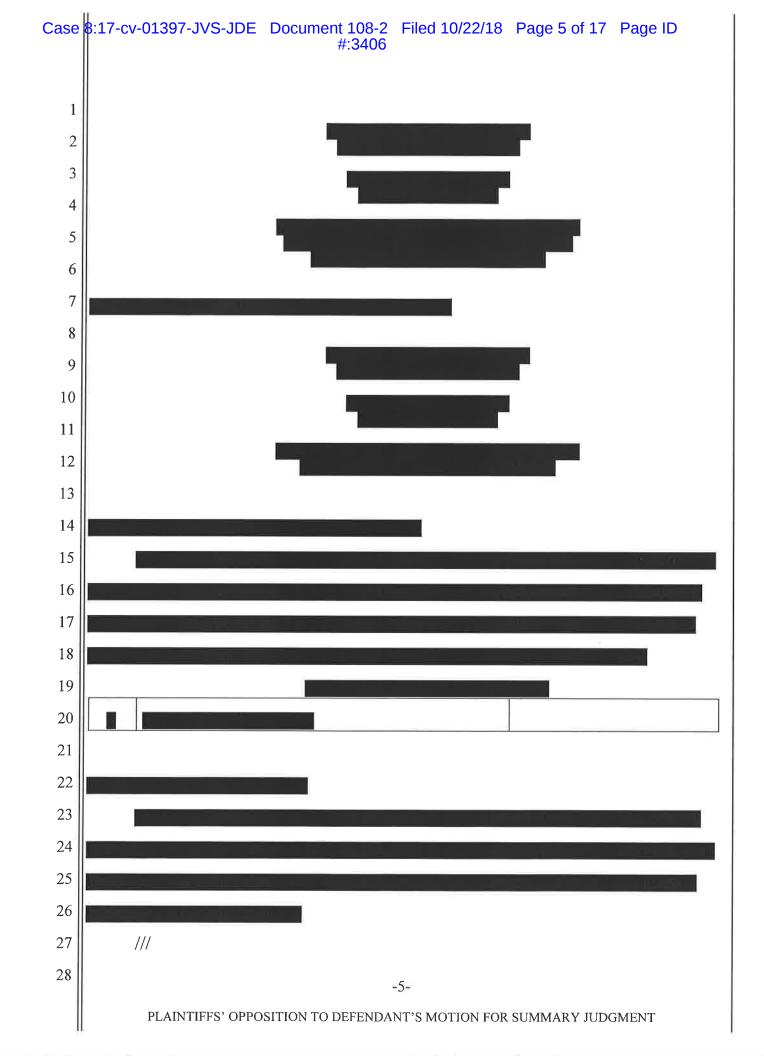
Defendant Younique sold the "Moodstruck 3D Fiber Lashes" (the "Fiber Lashes" or the "Product") while representing that the Product was composed of "Natural Fibers" and "100% Natural Green Tea fibers." Independent testing, however, shows that these representations were false and that the product was actually comprised of synthetic nylon.

Defendant contends that Plaintiffs cannot demonstrate Article III standing or prove the elements of their warranty or state consumer protection law claims because they cannot demonstrate that: 1) they saw the "natural" representation before buying the Product; 2) they relied on the "natural" representation in deciding to purchase the Product; 3) that they paid more for the Product based on the "natural" representation. Each of these arguments, however, presents issues of fact that need to be resolved, and are thus inappropriate for summary judgment. As such, Defendant's motion should be denied in its entirety.

II. <u>FACTS</u>

Younique marketed and sold the product at issue in this case, the "Moodstruck 3D Fiber Lashes" (the "Fiber Lashes" or the "Product") between October of 2012 and July of 2015. The Lashes have two components: an applying gel and the fiber lashes themselves.

Declaration of Adam Gonnelli In Support Of Plaintiffs' Opposition to Defendant's Summary Judgment Motion ("Gonnelli Decl.")





III. STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(a). The moving party bears the initial burden of establishing there is no genuine issue of material fact. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Summary adjudication, or partial summary judgment "upon all or any part of [a] claim," is appropriate where there is no genuine dispute as to any material fact regarding that portion of the claim. Fed. R. Civ. P. 56(a); *see also Lies v. Farrell Lines, Inc.*, 641 F.2d 765, 769 n.3 (9th Cir. 1981). Material facts are those that may affect the outcome of the case. *Nat'l Ass'n of Optometrists & Opticians v. Harris*, 682 F.3d

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1144, 1147 (9th Cir. 2012) (citing. *Liberty Lobby*, 477 U.S.at 248). A dispute is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Liberty Lobby*, 477 U.S. at 248.

To defeat the motion for summary judgment, the responding party must present admissible evidence sufficient to establish any of the elements that are essential to the moving party's case and for which that party will bear the burden of proof at trial. See id.; Taylor v. List, 880 F. 2d 1040, 1045 (9th Cir. 1989). The Court may grant summary judgment only if the motion and supporting materials, including the facts considered undisputed, show the movant is entitled to summary judgment and if the responding party fails to properly address the moving party's assertion of fact as required by Rule 56(c). See Fed. R. Civ. P. 56(e).

In judging the evidence presented in support of or opposition to summary judgment, the Court does not make credibility determinations or weigh conflicting evidence. Rather, it draws all inferences in the light most favorable to the nonmoving party. See T.W. Electric Service, Inc. v. Pacific Electric Contractors Ass'n, 809 F.2d 626, 630-31 (9th Cir. 1987).

PLAINTIFFS WERE EXPOSED TO THE "100% NATURAL GREEN IV. TEA FIBERS" REPRESENTATION AND PAID MORE FOR THE PRODUCT AS A RESULT

Younique makes the same three arguments for each of the Plaintiffs: 1) the Plaintiffs were not exposed to the "100% Natural Green Tea Fibers" representation before purchasing the Product; 2) the Plaintiffs did not rely on the "100% Natural Green Tea Fibers" representation in purchasing the Product; and 3) the Plaintiffs did not pay more for the Product based on the "100% Natural Green Tea Fibers" representation.

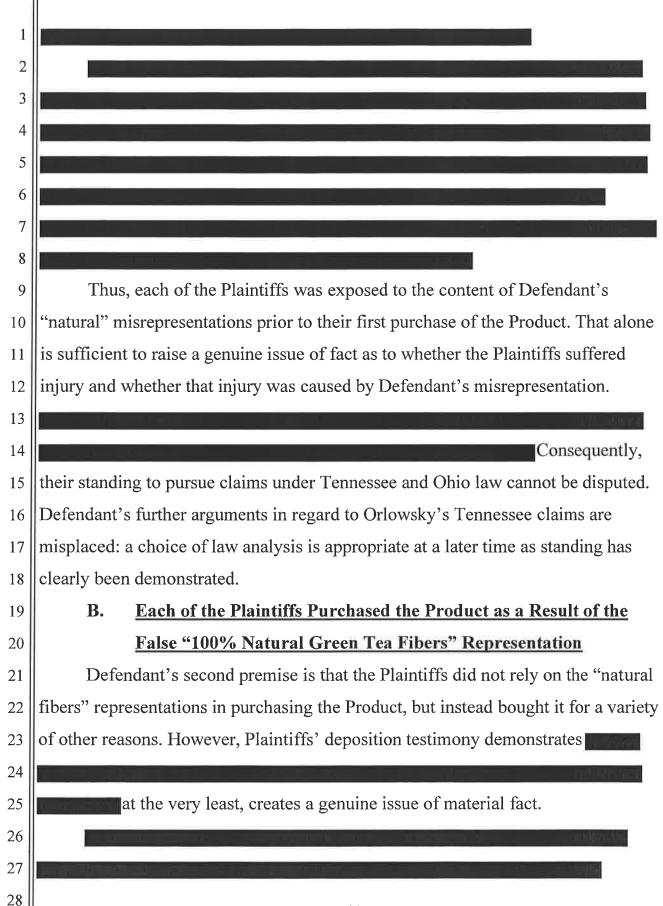
These three "undisputed facts" are the basis for Defendant's motion for summary judgment regarding Plaintiff Reilly's claims under Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA") (Def. Mot. 13-14), Plaintiff
Orlowsky's claims under the Tennessee Consumer Protection Act ("TCPA") and
Tennessee express and implied warranty claims (Def. Mot. 16-18); Plaintiff
Schmitt's claims under the UCL and California implied and express warranty laws
(Def. Mot. 18-21) and; Plaintiff Brun's claims under Ohio implied and express
warranty laws (Def. Mot. 22-24). Defendant contends that because the Plaintiffs
allegedly were not exposed to the misrepresentation prior to purchasing the product,
purchased the product for reasons other than the fact that it was advertised as
"natural," and did not pay more for the Product based on the misrepresentation, that
they lack standing and cannot show the necessary elements of the above claims.
(Def Mot. 16-21, 22-24).

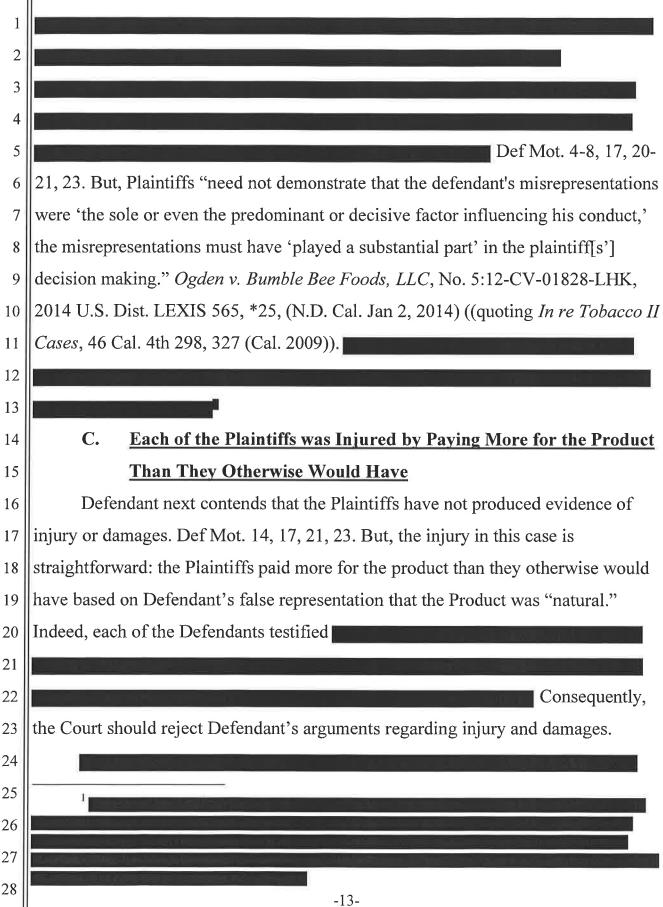
But there is evidence to the contrary for each argument.

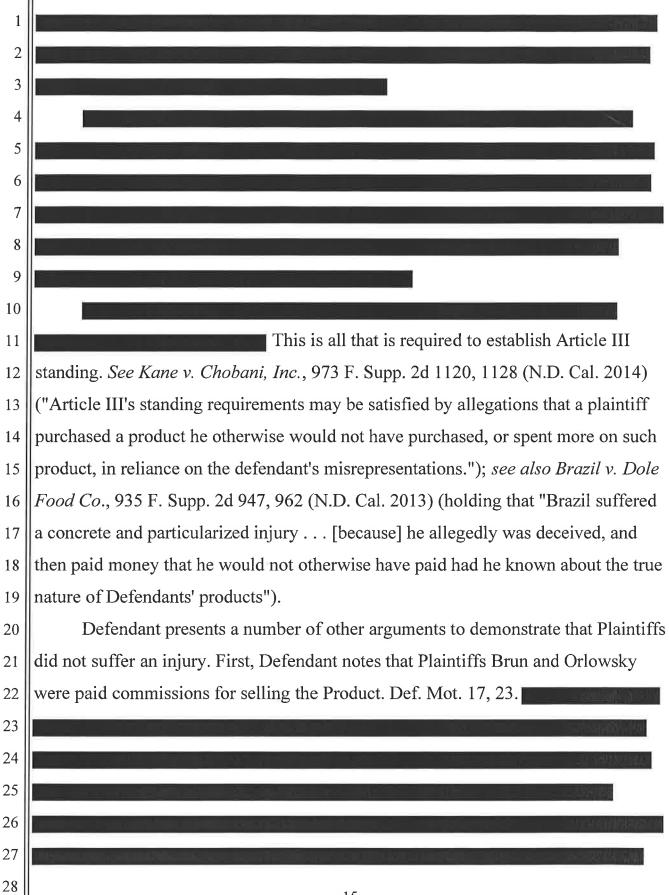
A. Each of the Plaintiffs was Exposed to the Misrepresentation Prior to Purchasing the Product

Defendant contends that none of the Plaintiffs saw the product labeling prior to their first purchase of the Product, and therefore they cannot have standing and cannot demonstrate the causation and injury elements of their warranty and state consumer protection claims. Def Mot. 16-21, 22-24.

Contrary to Defendant's argument,







Expert, Dr. Donald May. First, Younique argues that

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7	In any case, this is an issue		
8	that should be addressed as part of the <i>Comcast</i> analysis in the pending class		
9	certification motion.		
10	v. <u>conclusion</u>		
11	For the reasons stated above, Defendant's motion for summary judgment		
12	should be denied in its entirety.		
13 14	Dated: October 22, 2018 NYE, PEABODY, STIRLING, HALE & MILLER, LLP		
15 16	By: /s/ Jonathan D. Miller, Esq. Alison M. Bernal, Esq.		
17 18	Dated: October 22, 2018 CARLSON LYNCH SWEET KILPELA & CARPENTER, LLP		
19 20	By: /s/ Ed Kilpela, Esq.		
21	Dated: October 22, 2018 THE SULTZER LAW GROUP P.C.		
22	By: /s/ Adam Gonnelli, Esq.		
23 24			
25	Dated: October 22, 2018 WALSH, PLLC		
26	By: <u>/s/</u> Bonner Walsh, Esq.		
27			
28	Attorneys for Plaintiffs and the Class -17-		
	PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT		